

**Minutes
Hampden Town Council
Services Committee
October 12, 2010 @ 5:30pm**

The meeting of the Hampden Town Council Services Committee was called to order at 5:30p.m. on Tuesday, October 12, 2010, at the Hampden Municipal Building by Chairperson Jean Lawlis.

Gretchen Heldmann, GIS/IT Specialist
Councilor Jean Lawlis, Chair
Melanie Spencer, MSAD22

Note: There were not enough people present to constitute a quorum. The meeting held was for informational purposes to answer some of Melanie's questions related to the trail grant.

1. Approval of Minutes

No action taken due to lack of quorum.

2. Old Business

A. Subcommittee Updates

No action taken due to lack of quorum.

B. MSAD22 Trails Grant

No action taken due to lack of quorum. Melanie presented two documents she had put together, which are attached. Also attached is the current draft MOU that has been marked up by both the town and MSAD22 attorneys.

The trail grant deadline is Nov. 5th. The only Council meeting before that is this coming Monday the 18th, and to get on that agenda, all materials would need to be submitted by tomorrow at noon. Melanie's list included a few substantive items that require Council action. Councilor Lawlis pointed out that when this trail grant project was first presented to the town, it was presented as MSAD22 would do all the work, and that the town was only being asked to provide the land. The project has since morphed into Gretchen helping with and/or doing a lot of the mapping, and now the town has been asked to be an applicant on one of the grants, thus putting the town in the position of needing to come up with the 20% match requirement. The MOU is also still outstanding in that the two attorneys need to iron out their remarks and finalize the wording into a single agreed-upon document. The other items listed on Melanie's

sheet would require a bit of Council discussion, and further, possible consideration by the Council Finance Committee (if the town were to be an applicant and be responsible for the match). Based on the list of items and the time frame to get the materials together and submitted, she decided it would be nearly impossible to gather all the materials in time for the Council meeting, and that it would be best to go back to the folks she is working with within MSAD22 and discuss other options, such as submitting the grants for the next round that should be announced this spring.

3. New Business

4. Public Comment

No public comments.

5. Committee Member Comments

No comments.

The next meeting is November 8, 2010 at 6:00pm.

Meeting adjourned at 6:25pm.

Respectfully submitted,
Gretchen Heldmann, GIS/IT Specialist

Hampden Recreational Trail and Trail Bridges Project Update

October 12, 2010

For Town Services Committee

Status:

1. Trail Grant

Pre-approval applications have been requested from 3 agencies. Have received approval from one.

Still waiting on final cost estimates from HE Sargent and possibly Hughes Bros. for trail work.

Also waiting on more accurate map of trail route that shows location of wetlands & private land.

Will complete draft of application by early next week.

2. Bridge Grant

Waiting on cost estimates from AIT Bridge Co. for 2 bridges. Will determine if wetlands permitting costs can be mostly allocated to this grant.

Will complete draft of application by early next week.

Letters of Support requested:

For trail grant – HA X-county team, Dick Balentine, Dave Shapiro, Emily Cartwright, Rob Burke, Boosters Club/Bill Burke, Kerrilyn Marzullo, Tom Ingraham

For bridges -- PVSC/Sally Burke/Annette Nelligan, Goodwill Riders, Boosters Club/Bill Burke

Questions:

1. Should abutting landowners be notified prior to grant submission? After? After determination of award? Who communicates this and how?
2. If wetlands mitigation is needed, will town be in a position to do so?
3. Both grant applications require a 20 % match. The match may include any of the following: cash; volunteer labor, equipment and materials; other state, local or federal grants. What match opportunities are available from the town? Possibilities to consider are permitting services, legal, advertising, etc.

Items Necessary for Completion of Grant Applications

1. Memorandum of Understanding – Signed by appropriate Town and District officials. (Will be used for both grant applications.)
2. Signed Resolution voted upon by the appropriate legislative body (Recreation Board? Town Services Committee or Full Council?) authorizing submission of the bridge grant application, including votes for and against. (Will be used for the bridge application only; Recreation Department is the applicant.)
3. Signed statement from the appropriate town official stating the proposed project has been reviewed by the appropriate boards (planning, etc.) and is consistent with applicable local plans and ordinances. (Bob Osborne?) (Will be used for both grant applications.)
4. Letter of Transmittal on Town Rec Dept. letterhead, signed and dated by applicant's ^{SUE} CEO. Must include specific language regarding ability and intent to finance share of proposed project costs, including long-term maintenance and management. (I will supply language. Needed for bridge application only.)

Items Preferred for Completion of Grant Application

1. Trail plan superimposed on town maps using GPS points to indicate that trail is not on private property and indicates specific infringement on wetlands. (For both)
2. Letters of support from Town officials (Sue Lessard, Committee members, etc.) (For both or either)
3. Documentation of any services, materials, labor or funds that will be donated (in-kind) on behalf of the project. (For both)

DRAFT

JOINT USE AGREEMENT

This Agreement is entered into by and between the Town of Hampden, a municipal corporation located in Penobscot County, Maine (hereinafter “Town”), and Maine School Administrative District / Regional School Unit #22, an educational entity formed under the laws of the State of Maine with a principal place of business in Hampden, Penobscot County, Maine (hereinafter “District”).

RECITALS:

- A. Town owns two parcels of land as described in a Quitclaim Deed With Covenant from Parkway Realty Development Corporation dated December 20, 1994, recorded in the Penobscot County Registry of Deeds in Book 5785, Page 263 (said parcels being depicted on Hampden Tax Map 6 as Lots 42A and 43B).
- B. District owns a parcel of land as described in a Quitclaim Deed With Covenant from Parkway Realty Development Corporation dated May 5, 1992, recorded in said Registry of Deeds in Book 5059, Page 22 (said parcel being depicted on Hampden Tax Map 6 as Lot 43A). (Note: Is some of the proposed trail located on adjacent land of the District to the north?) [Tom, I'll check on this. I would also like to review title references.]
- C. Town and District desire to have a trail system developed on their properties for recreational use by members of the public and students of the District. The District, in cooperation with the Hampden Academy Boosters Club (hereinafter “Boosters Club”) and the Hampden Education Athletic Trust (hereinafter “Trust”), will be applying for a grant for the development of the trail system. The approximate location of the proposed trail system is shown on Exhibit A.
- D. The contemplated trail system will be approximately 1.8 miles in length, with a width ranging from 10 feet to 20 feet. The trail will be comprised of some wood chip pathways, some stone dust, and other materials. The trail system will also include 6 culverts and 2 bridges, one of which will be a 10 to 12 foot bridge crossing Reeds Brook designed to accommodate certain motorized vehicles and one of which will be a small bridge [to accommodate motorized vehicles] to accommodate pedestrian traffic? across a wetland area. It is anticipated that grant applications will be submitted to seek funding for the trail and bridges. The trail system will also include approximately 12 small trail signs and one trailhead sign. The entire trail system, including the trail improvements and bridges, is hereinafter referred to as the “Facility”. [Tom, is ATV traffic to be prohibited on the bridges?] Yes.

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NOW, THEREFORE, District and Town hereby agree as follows:

1. Term. This Agreement shall commence on its date of execution, and shall continue for a period of 10 years from the date on which the Recreational Trail Committee certifies to District and Town that the Facility has been completed [and both the District and the Town accept such certification], unless sooner terminated as provided in Section 15.
2. Cooperative Agreement. As provided herein, the parties agree to cooperate in coordinating programs and activities to be conducted on the Facility located on their respective properties. As used in this Agreement, "Owner" shall mean the party to this Agreement that owns a particular property and the portion of the Facility located thereon, and "User" shall mean the other party using the Owner's property and the portion to the Facility located thereon. "Public Access Hours" shall mean the hours during which the general public may use the Facility located on the Town property and District property.
3. Permitted Uses.
 - a. District shall be entitled to priority use of the Facility for school-related recreational activities involving cross country running and Nordic skiing, including school athletic meets. District shall notify Town in advance of any scheduled meet, and shall post "trail in use" signs at the trailhead during the meet. It is anticipated that there will be no more than 8 meets per year.
 - b. At all other times and subject to a schedule developed by Town and District, the Town shall be entitled to use the Facility for community recreational purposes for the benefit of District students, the District, and the Town at large. In planning programs and scheduling activities on District property, the security, academic, athletic and recreational needs of the District shall be taken into account and ~~adequately protected~~ given priority.
 - c. Third Party Use? [Tom, how would this be different than use by the town at large as described in 3(b) above?] I was thinking of events by other nonprofit entities, such as an organized hike or nature walk by the Boy Scouts. I do not know if this was contemplated by the parties.
4. Retention of Rights. Nothing in this Agreement shall be construed to limit or interfere with each party's legal rights to develop or use their respective properties so long as the use and development thereof does not materially alter or modify the Facility. Each party shall have the right to re-locate the portion of the Facility located on that Party's property at its sole cost and expense.
5. Compliance with Law. All development and use of District property and Town property under this Agreement shall be in accordance with all applicable laws, ordinances, or regulations. Any actions taken by District or

Town that are required by law, but are inconsistent with the terms of this Agreement, shall not constitute a breach of this Agreement.

6. Recreational Trail Committee. District and Town shall establish a Recreational Trail Committee, composed of ____ representatives of the District, ____ representatives of the Town, and one representative of the Boosters Club. The purpose of the Committee is to oversee the development and use of the Facility, to recommend rules and regulations for the District and Town to adopt to implement this Agreement, to monitor and evaluate the joint use project and this Agreement, and to confer and discuss operational or other issues that might arise during the term of this Agreement. The Committee may also develop recommendations concerning the maintenance of, or improvements to, the Facility. At least once per year, the Committee shall cause the Facility to be inspected, and shall prepare a proposed maintenance and/or repair work plan for consideration by District and Town.
7. Scheduling Use of Facility. District and Town shall develop a master schedule for joint use of the Facility to allocate use thereof to the District, Town, and Public Access Hours. (Third Parties?). District and Town representatives shall meet periodically with the Committee to review and evaluate the status and condition of the Facility and to modify or confirm the schedule.

8. Public Access Hours.

- (a) The parties agree that the general public may use the Facility for passive outdoor recreational activities, such as hiking, walking, running, biking, snowshoeing, or horseback riding. The Facility may also be used for snowmobiling when the ground is covered with snow, but other motorized vehicles, such as all terrain vehicles, shall be prohibited. Provided, however, that the use of motorized vehicles for emergency or maintenance purposes is permitted. The Public Access Hours shall be from _____ to _____ daily. Each party may impose limitations and restrictions on Public Access Hours during activities sponsored by that party.

8. (b) In the event the District determines that a particular use of the Facility is unsafe for District students, including without limitation snowmobiling, District may preclude further use of the Facility for such purpose by notice to the Town. Hunting shall be prohibited at all the Facility. Should this be in a separate section, as it applies to more than Public Access Hours?

9. Parking. District agrees that it shall designate parking facilities that may be used for public parking associated with any event sponsored or organized by the Town's Recreation Department, and during Public Access Hours.

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10. Funding. District and Town acknowledge and agree that neither party is obligated to provide funding for the design, creation nor construction of the Facility, and that the parties are contemplating grant funding for the project. District shall be the lead agency for any grant applications. If grants are awarded for the project, the Trail Committee shall review the same and make a recommendation to District and Town concerning the portion of the proposed Facility that may reasonably be accomplished with the available funding. At that time, District and Town shall consult to agree upon the scope of the project.

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11. Approval of Plans. No construction of the Facility shall commence until the District and Town have reviewed and approved the final design thereof and any construction documents or contracts.

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12. Improvements and Modifications. Once the plans have been approved, no modification thereof shall be made without prior approval of District and Town. Once the Facility has been constructed, no modifications or improvements thereto shall be made without the prior written consent of the Owner of the property on which the modification or improvements to the Facility are to be located. Any such modifications or improvements shall be at the expense of the requesting party, unless otherwise agreed upon.

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13. Liability and Indemnification. Each party enjoys certain immunities from liability under the Maine Tort Claims Act, and nothing in this Agreement shall be construed to be a waiver of those immunities by either party.

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a. Town shall defend, indemnify, and hold the District, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages, arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury are caused by or result from the negligent or intentional acts or omissions of the Town, its officers, agents, or employees, and are not immune from liability under the Maine Tort Claims Act.

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b. District shall defend, indemnify, and hold the Town, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees or claims for injury or damages, arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury are caused by or result from the negligent or intentional acts or omissions of the District, its officers, agents, or employees, and are not immune from liability under the Maine Tort Claims Act. [Tom, I am checking to see if District has insurance coverage for indemnity.]

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Each party agrees to provide liability coverage for its property and the portion of the Facility located thereon as part of its risk pool coverage or insurance coverage.

14. Responsibility for Damage. Town shall be responsible for the repairs of any damage to the Facility due to, or as a result of, Town's use of the Facility as part of any organized activity sponsored by its Recreation Department. District shall be responsible for the repair of any damage to the Facility due to, or as a result of, District's use of the Facility as part of its educational or recreational programs, including conducting cross country or ski meets. If damage results from use of Facility by third-party, costs of repair shall be shared equally by District and Town provided that any repairs to the bridges shall be equally shared by the Hamden Academy Boosters and the Town. The repairs shall be sufficient to restore the Facility to its condition prior to such damage, and shall be made in a reasonable time after the damage occurs or is discovered. Each party shall report any damage to the other party.

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15. Maintenance of Facility. Each party shall restore the Facility to a clean and neat order after any use thereof by the party. District and Town, in cooperation with the Boosters Club and Penobscot Valley Ski Club-Nordic group, agree to perform routine maintenance of the Facility, with the understanding that expenses related to trail maintenance shall be borne by the Boosters Club and that expenses related to bridge maintenance shall be borne equally by Town and the Boosters Club. In the event that such funding is not provided, the Trail Committee shall evaluate alternate funding sources and make recommendations to District and Town. District and Town shall cooperate in good faith to secure funding, if necessary.

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16. Termination. This Agreement may be terminated in writing by either party if the contemplated funding for the Facility is not received by _____, _____, or the other party has breached the terms of this Agreement and the breach has not been cured within 30 days of receipt of written notice of the breach. In addition, either party may terminate this Agreement in writing if the terms and conditions of any funding grant are unacceptable to that party. The terminating party must provide written notice of the termination within 30 days of its receipt of the terms and conditions of any funding grant.

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17. Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject matter, and supersedes any prior negotiations, representations, agreements or understandings.

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18. Amendment. This Agreement may not be amended or modified, nor may compliance with any of its terms be waived, except by written instrument duly executed by both parties.

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19. Notice. All notices to be given by the parties shall be in writing and shall be either delivered personally, or mailed by certified mail (return receipt requested), as follows:

If the Town: Susan M. Lessard, Town Manager
Town of Hampden
106 Western Avenue
Hampden, ME 04444

If to District: Richard A. Lyons, Superintendent
M.S.A.D. #22
24 Main Road North
Hampden, ME 04444

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on their behalf as of this ____ day of _____, 2010.

M.S.A.D. #22

Witness By: _____
Richard A. Lyons, Its Superintendent

Town of Hampden

Witness By: _____
Susan M. Lessard, Its Town Manager

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